

1 established during this workshop. Of course, I am a lawyer  
2 and not an engineer, so I have to give my disclaimer. These  
3 comments are mine and not necessarily those of the  
4 Commission.

5 Our 271 proceeding is an ongoing project, and I  
6 will share facts as to what we have done and as to what we  
7 are doing, but we are somewhat limited as to what questions  
8 we can answer. With me, as Carol indicated, is our network  
9 expert, Nara Srinivasa. He is going to answer all the  
10 really hard questions that you have.

11 I am going to give you an overview of what the  
12 Texas PUC has done in our arbitrations and in the 271  
13 context. In the context of the AT&T/MCI arbitration, we  
14 were setting UNE prices.

15 At some point the Eighth Circuit decision came  
16 out, and Southwestern Bell said it would rather combine UNES  
17 than allow CLECs access to the central office so the  
18 Commission allowed basically I guess, for lack of a better  
19 term, a glue charge that Southwestern Bell stated was cost  
20 based. A portion of the charge is for central office  
21 access, and the remainder is for additional costs relating  
22 to combining the elements.

23 On Section 271, June 1, I guess which was Sunday,  
24 or the 31st of May was Day 90 in our Texas 271 project, and  
25 that was the day. We were given 90 days to come to a

1 conclusion. We conducted a five day hearing from April 21  
2 to 25, and many of you in this room were at that hearing.

3 Instead of issuing an Order -- on June 1 we  
4 filed -- and coming out with an Order with findings of fact  
5 and conclusion of law, instead of doing that we issued a 20  
6 page document setting forth what our Commission will need to  
7 see before finding that Southwestern Bell meets Section 271  
8 requirements.

9 The Commission envisions this to be the beginning  
10 of a collaborative process. Yesterday the participants in  
11 Southwestern Bell were required to file comments as to how  
12 they see the collaborative process working, and within the  
13 next week or so we will be coming out with an Order defining  
14 those parameters.

15 In our Section 271 case, Southwestern Bell  
16 indicated five methods that would allow CLECs to employ to  
17 combine UNES, and those have been discussed in much detail  
18 today.

19 I will tell you what we recommend, and I will read  
20 you directly from our recommendation. This is in addition  
21 to the recommendations addressed in the Public Interest  
22 section and the OSS and Performance Standards sections  
23 because, as many of you know, those overlap on Item (ii) of  
24 the checklist.

25 We stated Southwestern Bell shall offer at least

1 the following three methods to allow CLECs to recombine  
2 UNEs. These three methods attempt to balance Southwestern  
3 Bell Telephone's security concerns with the desire of CLECs  
4 to combine UNEs.

5 The first is virtual collocation of cross connects  
6 at cost based rates, the second is access to Recent Change  
7 capability of the switch to combine loop/port combinations,  
8 and the third is electronic access such as digital cross  
9 connect for combining loop and port at cost based rates  
10 where available.

11 Southwestern Bell Telephone, Commission staff and  
12 the participants to this proceeding shall explore the  
13 following issues during the collaborative process:  
14 Additional methods for recombining UNEs or for allowing  
15 CLECs to combine UNEs and the cost associated with such  
16 methods and whether Southwestern Bell is providing any and  
17 all individual UNEs required by the federal Act.

18 The difficulty for the Texas Commission in this  
19 proceeding has been balancing the Eighth Circuit decision  
20 and the premise that the ILECs did not want to do the  
21 combining with the security issues raised by Southwestern  
22 Bell in coming up with a system that provides CLECs with  
23 parity.

24 Those are really my only comments. Thank you.

25 MS. MATTEY: Thank you, and I will turn it over to

1 Brad.

2 MR. RAMSAY: My turn at last. I have been in my  
3 office all day. I set up a port so that you would not  
4 endure this suffering alone. About I think 12 or 13 state  
5 commissions are listening in right now also.

6 I was struck as I listened all day today that the  
7 technical discussions ranged quite a bit, and I found them  
8 quite interesting, but the legal arguments -- well, never  
9 has so much been said by so few people so many, many, many  
10 times.

11 I am not going to continue that. I think we all  
12 kind of have a real good idea of what the structures are. I  
13 was very pleased with Jake gave me a holler and said he  
14 wanted NARUC here. I was less pleased when I was  
15 unsuccessful in conning Bob Rowe in coming down here to be  
16 on the panel, and it turned out I was going to have to be  
17 here myself.

18 In speaking to Bob, he wanted me to make sure to  
19 extend the appreciation of the NARUC leadership and the  
20 state commissions for including us in part of this process  
21 and having this forum today.

22 I asked Jake what he wanted me to talk about, and  
23 he said why do you not just give us a real quick view of  
24 what is going on across the states? Well, after the Eighth  
25 Circuit opinion there were really about five things that a

1 state could do.

2           They could either, as Michigan did, determine as a  
3 matter of independent state authority that the Eighth  
4 Circuit opinion had no conclusive effect, and they could go  
5 on and require recombination; they could choose to enforce  
6 the terms of the "voluntarily" negotiated interconnection  
7 agreements; they could determine that the Eighth Circuit  
8 precludes state action in this area; or they could use the  
9 big stick of 271 like New York and Texas and also  
10 Pennsylvania and try to extract what the BOCs would refer to  
11 as concessions with respect to unbundled network  
12 combinations as a quid pro quo for endorsements to the FCC  
13 as part of the 271 applications.

14           I managed frantically the last week -- I sent out  
15 e-mails to all of my state commissions and said please,  
16 please, please tell me what the heck you guys are doing.  
17 Well, only seven of them got back to me so last night I went  
18 on Lexis and ran across 46 cases -- I read all of them; none  
19 of them were really on point -- and 33 news articles. About  
20 three of those were really applicable, but I did manage to  
21 come up with something about 23 states, and I have materials  
22 here. I have about I guess 35 copies because I did not want  
23 to carry any more of them over here for those of you who are  
24 interested.

25           Being a lawyer, I have to make two caveats. One

1 of them, of course, is anything I say here about legal  
2 arguments is my opinion, but the second thing is typically  
3 when I do any kind of survey I write it in my own words, cut  
4 it down, and then I send it back to the state commissions,  
5 and they tell me how I mischaracterized what they really  
6 did. I did not have time to do this this time, so this is  
7 an uncorrected survey and should be treated as such.

8 As for what is coming up, the Florida Commission  
9 today or tomorrow will be issuing the written opinion in  
10 their unbundled network proceeding. As I understand it,  
11 there is no statement as to the preclusive effect of the  
12 Eighth Circuit opinion. There is no discussion of  
13 independent state authority. The Order that issued turns on  
14 interpretation of the contract provisions of the  
15 interconnection agreement at issue between BellSouth and I  
16 think it is AT&T.

17 They have decided what they are going to do is say  
18 that the interconnection agreement does not cover a  
19 combination of unbundled network elements when it results in  
20 a completed service and that the carriers will have to go  
21 back and negotiate on that.

22 Arizona, on the 15th of this month, will be having  
23 an oral argument on the unbundling issue. Alabama is having  
24 a series of workshops June 25 and 26 to discuss 271 issues.  
25 One of the big issues there is, of course, as you might

1 expect, recombination.

2 Texas and Pennsylvania. Well, you already know  
3 about Texas. Pennsylvania also has basically what most of  
4 us are calling a road map for the BOCs out. Those will be  
5 going on over the next couple of weeks.

6 Let's talk about what the states have done very  
7 briefly. In terms of those four alternatives, to my  
8 knowledge, of the 23 states that I looked at anyway, two of  
9 the states had some preliminary determination that they are  
10 not going to challenge the preclusive effect, if it does  
11 have a preclusive effect, of the Eighth Circuit opinion.

12 In Maryland there is a hearing examiner's proposed  
13 Order that says that the Eighth Circuit opinion does have a  
14 preclusive effect. The Commission has not ruled on that  
15 yet.

16 The Massachusetts Commissioner, Paul Vassington,  
17 sent me a note about what is going on in their jurisdiction,  
18 and he said that they chose not to face that issue at this  
19 time. I have not seen the Order from the Massachusetts DPT,  
20 so I do not know, you know, exactly how they phrased it, but  
21 they are not going to I guess challenge any preclusive  
22 effect that the Eighth Circuit opinion has right now. At a  
23 minimum, that is what they did.

24 As far as the states that have determined they  
25 have independent authority, we have Michigan. He has

1 already discussed what they have done. We also have  
2 Minnesota, Colorado, Washington, Vermont and Utah. Michigan  
3 and Washington have already chosen to enforce the  
4 recombination requirements that they have imposed.

5 The Colorado Commission has only made the  
6 determination that it has the authority as a matter of state  
7 law to impose recombination requirements. It is in the  
8 midst of evidentiary hearings right now to determine if it  
9 wants to do that.

10 As far as Vermont goes, in April an Administrative  
11 Law Judge up there put out an Order that David Farnsworth,  
12 who I think is listening right now, had a major hand in  
13 writing, and I thought it was so good I also included it in  
14 my materials and full text, but it is an ALJ proposed Order  
15 that finds the Commission has authority, though the Vermont  
16 Public Service Board has not ruled on it yet. I think Bell  
17 Atlantic has filed a request for oral argument there, but we  
18 should see something I guess in the next two or three months  
19 on that also.

20 Utah I have not read. It was 106 pages, and I was  
21 all read out last night so I just tried to cut the relevant  
22 sections. I also attached that. I do not know what the  
23 basis is for them saying that they have the authority to  
24 require combinations. I only know that Ingo wrote me an  
25 e-mail message and sent me the text of the Order.



1           The other choice they had was to enforce the  
2     interconnection agreements as contracts and say that we are  
3     just going to enforce these as contracts. There were five  
4     states that did that -- Idaho, Ohio, Oregon, Texas, and I  
5     believe Michigan did in one case. Is that correct or wrong?  
6     Not to your knowledge? I am wrong there. That is why you  
7     have to check what I have written in here very closely.

8           Oregon had an interesting approach, at least from  
9     a legal perspective. Apparently the controlling juris  
10    prudence down there says that they cannot challenge the  
11    interconnection agreement until the Eighth Circuit opinion  
12    is final and not appealable, meaning that U.S. West cannot  
13    come in and challenge the Commission's authority until after  
14    the Supreme Court rules I believe is the way that that is  
15    read.

16           The Oregon Commission, and I am not going to bore  
17    you with it right now, but I did include a copy of the  
18    staff's testimony. They have an interesting approach as to  
19    why they have the authority to require recombinations also,  
20    and they have a pending proceeding aside from this ruling  
21    against U.S. West on a complaint they have filed.

22           Let's see. Did I cover everything? The last was  
23    the big stick approach or the 271 carrot, the big carrot  
24    approach, that New York, Pennsylvania and Texas have  
25    adopted. I do not really need to talk about those because

1 New York and Texas are here to answer your questions.

2 MR. PRYOR: Thank you.

3 I have one question that I would like to address  
4 to the panelists if they feel they can answer it.

5 What factors have you or will you consider when  
6 evaluating whether a Bell company provides  
7 non-discriminatory access to network elements in a manner  
8 that allows competing providers to combine them?

9 I guess I would like to ask, Bill, if you would  
10 start with that, and then we will move over to this side of  
11 the table and finish with Brad.

12 MR. CELIO: I think we answered that question  
13 twice already in comments, but we will try it again. Using  
14 I think the Federal Commission's language, it is again  
15 competitively a fair opportunity to compete.

16 It kind of breaks down into two parts. One of  
17 them is, you know, does their operational support system  
18 work, and, two, do they in fact provide UNEs in any way,  
19 shape or form?

20 Well, we have a feeling that the operational  
21 support system, at least what we have seen of it, works  
22 unless they are doing demonstrations. The fact that the  
23 company has numerous times refused to provide elements as we  
24 have defined them indicates that our process is not working.

25 Most of the folks have gone to a collocation

1 scenario, the facility based folks, simply because they are  
2 writing checks to do things, to buy stuff, to get  
3 rights-of-way, to do things like that, and they have made a  
4 business decision that well, it is better to be in business  
5 than to not be in business at all, so to basically say that  
6 Michigan has opted for a collocation scenario, they have  
7 not. They have just kind of been co-op'd into a collocation  
8 scenario, one we believe under Michigan law the folks do not  
9 have to do that. We are still struggling on the UNES.

10 I think the OSS probably appears to satisfy many  
11 of the requirements, although some of the modules have not  
12 been tested and are not being utilized. We are still on  
13 some of the old access type things, ASRs and things along  
14 those lines.

15 I think we are about halfway, maybe 40 percent of  
16 the way, there to say that I can tell you that sure, they  
17 are being provided in a non-discriminatory fashion because  
18 if they are not being provided at all it is a non-starter.

19 MR. PRYOR: Thank you.

20 MS. RUBINO: I cannot tell you specifically what  
21 our Commission is going to consider in terms of  
22 non-discrimination. I can tell you what we intend to look  
23 at in our proceeding, and one of the things that we really  
24 want to focus on is the impact on the customer.

25 Whatever method or methods eventually come out of

1     this, we want to make sure that there is not going to be too  
2     much risk of service outages or problems with the elements  
3     not being combined as expected and that kind of thing, so  
4     without leaning towards one method or another right now that  
5     is a serious concern, at least of our team, and I am sure of  
6     our Commission as well.

7             MS. NELSON: The only thing I would add is in  
8     addition to the impact on customers, obviously we would look  
9     for parity, first of all, but other than that I guess just  
10    the impact on competition in general is what we would look  
11    at.

12            MR. PRYOR: Brad, do you have anything to add?

13            MR. RAMSAY: I would like to add only that at  
14    least from a legal perspective the Colorado Commission and  
15    the Oregon Commission and the Vermont Commission, all three  
16    of those have variations of the infamous public interest  
17    standard that they will be using to evaluate whether they  
18    should be requiring. I am not going to speak to that. I  
19    will let my principals speak to that.

20            MR. PRYOR: I think we have time for just maybe  
21    one or two questions from the audience if there are any.  
22    Going once? Going twice?

23            (Panel excused.)

24            MR. PRYOR: This concludes today's forum. I think  
25    it has been very informative and a very productive exchange

1 of an extremely difficult issue, and I would like to again  
2 thank all of the panelists for participating today. Thank  
3 you.

4 (Whereupon, at 3:35 p.m. the forum was concluded.)

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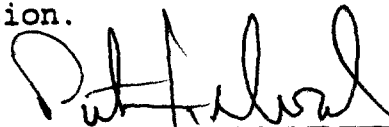
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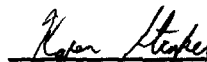
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